UNITED STATES DISTRICT COURT DISTRICT OF MAINE

UNITED STATES OF AMERICA)	
)	
)	
)	
v.)	CRIMINAL No. 03-116-P-H
)	
JOHN C. BAERT,)	
)	
DEFENDANT)	

ORDER ON DEFENDANT'S MOTION TO STRIKE

This motion to strike raises the issue whether allegations pertinent to sentencing should be stricken from an Indictment as surplusage under Fed. R. Crim. P. 7(d). Given this District's interpretation of Blakely v. Washington, 124 S. Ct. 2531 (2004), see, e.g., United States v. Fanfan, 2004 WL 1723114 (D. Me. June 28, 2004); United States v. Zompa, 326 F. Supp.2d 176 (D. Me. 2004), the government must include such allegations in order to obtain what it considers an appropriate sentence under the United States Sentencing Guidelines. Perhaps by the time of trial in this case, the Supreme Court will have decided Fanfan and Booker and given us clear guidance on how the federal Guidelines are to be

-

¹ <u>Accord United States v. Booker</u>, 375 F.3d 508 (7th Cir. 2004); <u>Unites States v. Ameline</u>, 376 F.3d 967 (9th Cir. 2004). <u>But see United States v. Hammoud</u>, 378 F.3d 426 (4th Cir. 2004); <u>United States v. Pineiro</u>, 377 F.3d 464 (5th Cir. 2004). <u>See also United States v. Penaranda</u>, 375 F.3d 238 (2d Cir. 2004).

administered post-<u>Blakely</u>, or perhaps the defendant will decide to waive <u>Blakely</u> issues and let the judge rather than the jury decide sentencing factors, or perhaps the sentencing factors can be bifurcated and tried later to the same jury if the defendant is convicted, but until then the sentencing allegations are proper

in the Indictment. The defendant's motion to strike surplusage is $\ensuremath{\textbf{Denied}}$.

So Ordered.

DATED THIS 8TH DAY OF SEPTEMBER, 2004.

/s/D. Brock Hornby

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CRIMINAL DOCKET FOR CASE #: 03CR116 (DBH)

United States of America represented by George T. Dilworth

Office of the United States Attorney

P.O. Box 9718

Portland, ME 04104-5018

(207) 780-3257

email: George.Dilworth@usdoj.gov

v.

John C. Baert represented by Martin Ridge

Defendant

Beagle & Ridge, LLC
P. O. Box 7044
Portland, ME 04112

(207) 773-1751

email: mjr@beagleridge.com